

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

CLAIMANT,

and

HARBOR REGIONAL CENTER,

Service Agency

OAH No. 2012120093

PROPOSED DECISION

This matter came on regularly for hearing on February 13, 2013, at Torrance, California, before David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California. Claimant was represented by her conservator, who is her cousin, and by her aunt. (Titles, not names, are used to protect Claimant's confidentiality.) Harbor Regional Center (HRC or Service Agency) was represented by Gigi Thompson, Manager Rights Assurance.

Oral and documentary evidence was presented. The record closed and the matter was submitted for decision on February 13, 2013.

ISSUE

The parties agreed that the following issue is to be resolved:

May the Service Agency discontinue funding for Claimant to be transported by Diversified Paratransit Inc. (DPI) with a DPI employee as a 1:1 aide, and substitute one of the four alternatives listed below:

1. DPI transportation with an In-Home Supportive Services (IHSS) worker as a 1:1 aide.
2. DPI transportation with an attendant as a 1:1 aide.
3. A voucher to the family with an attendant as a 1:1 aide.
4. ACCESS paratransit transportation with an attendant as a 1:1 aide.

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

1. Claimant is 49 years old and has been a consumer of HRC services for many years based on the eligible condition of mental retardation. She lives with her brother, and other family members also provide support. Claimant attends a day program and needs assistance to transfer into and out of the bus that takes her there and brings her home.

2. Without someone to monitor, redirect her and intervene when necessary, Claimant may engage in self-injurious behaviors while on the bus. For many years DPI provided an aide at no extra charge. Approximately two years ago DPI discontinued that service and HRC started funding a DPI employee to serve as the bus aide. DPI billed HRC for the aide's entire work shift, including time when the aide was not assisting Claimant, such as the period from after Claimant arrived at her day program until Claimant left the day program and got on the bus. On October 22, 2012, HRC sent Claimant a letter that it would no longer fund for the aide through DPI and suggested that her IHSS worker could assist her during the transportation. (Exhibit 1.) (IHSS is discussed in more detail in Factual Finding 7.) The monthly cost of services for these services, paid by HRC, is \$2,681.72 (\$1,854 for the aide, and \$727.72 for transportation by DPI).

3. Claimant's conservator submitted a Fair Hearing Request dated November 11, 2012. (Exhibit 2). There is proper jurisdiction for this matter to proceed. As part of the process of continuing hearing dates in this matter Claimant's conservator signed a waiver of the time for hearing to commence and for a decision to be completed.

4. Claimant and her family have been pleased with the aide, named George, provided by DPI. Recently, however, the family was notified that George was being promoted and that another aide would be assigned. As of the date of the hearing, George had trained another aide, however, there had been a third aide for at least one trip, and the third aide was not very helpful.

5. Claimant's family has expressed concern about changes to Claimant's routine and past instances wherein such changes resulted in negative behaviors. However, with the recent news of George's promotion, it is evident that there will necessarily be a change in the person acting as Claimant's aide on the bus.

6(a). HRC determined that an employee, Mileny, of Claimant's day program, Therapeutic Arts Program (TAP), is willing to serve as a bus aide for \$25 per day. Mileny will drive to Claimant's residence, take the bus with Claimant to TAP, and at the end of the TAP program each day, will accompany Claimant on the bus to Claimant's home. Claimant's family was unaware of this alternative until they heard about it at the hearing. HRC, TAP and DPI would have to cooperate so that pickup and delivery times could be adjusted so that Mileny would work her full shift at TAP. As a result, Claimant would have

to wait a short period of time at TAP before Mileny would be available for their return ride. Mileny would be employed part time by Cambrian to cover the attendant services she would provide on the bus rides.

6(b). The monthly cost of services for this alternative is estimated by HRC as \$1,277.72 (22 days @ \$25 for Mileny, subtotal \$550; and transportation by DPI @ \$727.72).

7. Another alternative suggested by HRC is for Claimant to be accompanied on the bus by a worker paid for by In-Home Supportive Services (IHSS), a county program which provides funds for certain types of care for Claimant. Claimant receives funding for 272 hours per month from IHSS. The monthly cost of services for this alternative is estimated by HRC as \$727.72, which is the cost of transportation by DPI.

8. The family objects to the use of IHSS workers for several reasons. Claimant's IHSS workers are already engaged for the full hours allowed in other tasks necessary for assisting Claimant in her activities of daily living. These IHSS workers, some of which are related to Claimant, have other jobs or medical limitations that would make it impractical or impossible for them to serve as a bus aide. If some IHSS hours are used for transportation assistance, there will be fewer IHSS hours available for other necessary tasks. Further, there is the issue of how the IHSS worker for bus duty would return from TAP after Claimant is delivered there in the morning, and then get to TAP for Claimant's bus ride home.

9. Another alternative suggested by HRC is for Claimant's family to be vouchered to provide transportation services to and from TAP. The monthly cost of services for this alternative is estimated by HRC as \$205.92, based on \$0.39 per mile. The family objects to this alternative for several reasons. Many persons in Claimant's family and circle of support don't drive, have other jobs or have medical limitations that would make it impractical or impossible for them to serve as a driver for Claimant. Due to Claimant's self-injurious behaviors, it is likely that another person, in addition to a driver, would be necessary to assure that she can be safely transported to TAP.

10. Another alternative suggested by HRC is for Claimant to be accompanied by Mileny on a bus provided by ACCESS para-transit. ACCESS provides bus transportation to county residents, including the aged and disabled, based on a determination of need, and allows another person to accompany the rider. Once found eligible and the route is established, ACCESS charges \$5 per trip, or \$10 per day. The monthly cost of services for this alternative is estimated by HRC as \$660 (22 days @ \$25 for Mileny, subtotal \$550; and transportation by ACCESS @ \$110). ACCESS transportation may also include other residents and the routes can vary from day to day, depending on who is going where. Also, ACCESS provides a time window for pickup and delivery, and the rider must be waiting at the curb when the bus arrives. Further, Mileny has not been asked if she would agree to this alternative.

11. HRC has offered to provide behavioral services, for Claimant, her family, and a bus aide, to address Claimant's self-injurious behaviors.

12. HRC has provided such services to Claimant and her family in the past. The services have not eliminated the behaviors, but have helped develop strategies for intervention and to lessen the effects of those behaviors.

13. HRC has also discussed moving Claimant to a day program closer to her home (TAP is about 12 miles away). Claimant has attended TAP for many years and she and her family are very pleased with the program and the interaction of its staff with Claimant. They are not interested in moving Claimant to another program.

LEGAL CONCLUSIONS AND DISCUSSION

1. Grounds exist under the Lanterman Act¹ for HRC to modify Claimant's current services so that Cambrian could provide a personal attendant, Mileny, for Claimant while she is transported by DPI to and from TAP, based on Factual Findings 1- 13 above.

2. Under the Lanterman Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Section 4502.) The Legislature has further declared that regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (Section 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner (sections 4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (section 4648, subd. (a)(2)).

Further, section 4648, subdivision (a)(8), provides that regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services.

3. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client's particular needs must be met. (See, e.g., sections 4500.5, subd. (d), 4501, 4502, 4502.1, 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subd. (a)(1) & (a)(2).) In building an Individual Program Plan (IPP), a priority is assigned to maximizing the client's participation in the community. (Sections 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

¹ The Lanterman Act is a reference to the Lanterman Developmental Disabilities Services Act, found at Welfare and Institutions Code section 4500 et seq. All statutory references are to the Welfare and Institutions Code.

4. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, “where appropriate.” Further, services and supports are to assist disabled consumers in “achieving the greatest amount of self-sufficiency possible” Planning is to have a general goal of allowing all consumers to interact with persons without disabilities in positive and meaningful ways. (Section 4648, subd. (a)(1).)

5. Services provided must be cost effective (section 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (See, e.g., sections 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

6. Although changes in Claimant’s routine can have a negative effect on her behavior, George’s promotion makes it necessary for her to acclimate to another attendant on the bus. The tentative arrangements discussed with Mileny and TAP seem a cost efficient way to make such a change, which is particularly attractive as Mileny is already employed at TAP and presumable is already known to Claimant. Continuing transportation with DPI makes the most sense at present, as Claimant has not yet been found eligible for ACCESS and using ACCESS will require some other changes in Claimant’s routine.

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7. Claimant and her family have raised reasonable concerns about the other alternatives offered by HRC.

ORDER

Wherefore, the Administrative Law Judge makes the following Orders:

1. The appeal of Claimant from the decision of Harbor Regional Center is granted in part and denied in part. Services may be changed, as noted below, but not as noted in the letter from Harbor Regional Center suggesting the use of an IHSS worker as a bus aide.
2. Harbor Regional Center shall continue services by DPI to transport Claimant to and from TAP.
3. Harbor Regional Center shall implement services for an employee of TAP to be hired by Cambrian to serve as Claimant's personal attendant to accompany her on the bus ride from her home to TAP and the return trip.

Dated: March 19, 2013.

_____/S/_____
DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.